

Senate Engrossed

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

SENATE BILL 1527

AN ACT

AMENDING SECTIONS 43-222 AND 43-1121, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 11, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1182; RELATING TO CORPORATE INCOME TAX CREDITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)



STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

OFFICE OF THE GOVERNOR
1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

MAIN PHONE: 602-542-4331
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May 20, 2005

The Honorable Ken Bennett
Senate President
Arizona State Senate
1700 West Washington Street
Phoenix, Arizona 85007

Re: Senate Bill 1527: tuition organizations; tax credit; budget

Dear President Bennett:

Today I vetoed Senate Bill 1527, related to tax credits for contributions to school tuition organizations.

During the course of the recent budget negotiations, I reached an agreement with you and Speaker Weiers under which I would sign Senate Bill 1527 if it were part of a comprehensive budget that included a number of other components, including specifically a bill to adequately fund English Language Learning (ELL) programs. You and Speaker Weiers pledged to develop a bi-partisan bill to adequately fund ELL. Unfortunately, this did not occur. Instead, the legislature passed only House Bill 2718, an unnecessarily bureaucratic and partisan measure.

In addition, when we discussed Senate Bill 1527, it was my understanding that it would include a sunset provision, similar to what many state agencies are subject to, that would automatically repeal this law after five years. Such a provision was omitted from the version the legislature passed.

Under the circumstances, I cannot sign Senate Bill 1527 at this time. I remain willing to do so, however, as soon as legislative leadership fulfills its obligations under our agreement. I am also willing to call a special session to deal with these issues.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Janet Napolitano".

Janet Napolitano
Governor

JN:TN/jm

cc: The Honorable Jim Weiers
The Honorable Dean Martin

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 43-222, Arizona Revised Statutes, is amended to
3 read:

4 43-222. Income tax credit review schedule

5 Each year the joint legislative income tax credit review committee
6 shall review the following income tax credits:

7 1. In 2004, sections 43-1081.01, 43-1083, 43-1084 and 43-1170.01.

8 2. In 2005, sections 43-1087, 43-1088 and 43-1175.

9 3. In 2006, sections 43-1073, 43-1089, 43-1089.01, 43-1089.02,
10 43-1090, 43-1176 and 43-1181.

11 4. In 2007, sections 43-1077, 43-1078, 43-1079, 43-1080, 43-1165,
12 43-1166, 43-1167 and 43-1169.

13 5. In 2008, sections 43-1074.01, 43-1081, 43-1168, 43-1170 and
14 43-1178.

15 6. In 2009, sections 43-1076 and 43-1162.

16 7. IN 2010, SECTION 43-1182.

17 Sec. 2. Section 43-1121, Arizona Revised Statutes, is amended to read:

18 43-1121. Additions to Arizona gross income; corporations

19 In computing Arizona taxable income for a corporation, the following
20 amounts shall be added to Arizona gross income:

21 1. The amounts computed pursuant to section 43-1021, paragraphs 3
22 through 9, 12, 26 and 27.

23 2. The amount of dividend income received from corporations and
24 allowed as a deduction pursuant to sections 243, 244 and 245 of the internal
25 revenue code.

26 3. Taxes which are based on income paid to states, local governments
27 or foreign governments and which were deducted in computing federal taxable
28 income.

29 4. Expenses and interest relating to tax-exempt income on indebtedness
30 incurred or continued to purchase or carry obligations the interest on which
31 is wholly exempt from the tax imposed by this title. Financial institutions,
32 as defined in section 6-101, shall be governed by section 43-961,
33 paragraph 2.

34 5. Commissions, rentals and other amounts paid or accrued to a
35 domestic international sales corporation controlled by the payor corporation
36 if the domestic international sales corporation is not required to report its
37 taxable income to this state because its income is not derived from or
38 attributable to sources within this state. If the domestic international
39 sales corporation is subject to article 4 of this chapter, the department
40 shall prescribe by rule the method of determining the portion of the
41 commissions, rentals and other amounts which are paid or accrued to the
42 controlled domestic international sales corporation and which shall be
43 deducted by the payor. "Control" for purposes of this paragraph means direct
44 or indirect ownership or control of fifty per cent or more of the voting

1 stock of the domestic international sales corporation by the payor
2 corporation.

3 6. Federal income tax refunds received during the taxable year to the
4 extent they were deducted in arriving at Arizona taxable income in a previous
5 year.

6 7. The amount of net operating loss taken pursuant to section 172 of
7 the internal revenue code.

8 8. The amount of exploration expenses determined pursuant to section
9 617 of the internal revenue code to the extent that they exceed seventy-five
10 thousand dollars and to the extent that the election is made to defer those
11 expenses not in excess of seventy-five thousand dollars.

12 9. Amortization of costs incurred to install pollution control devices
13 and deducted pursuant to the internal revenue code or the amount of deduction
14 for depreciation taken pursuant to the internal revenue code on pollution
15 control devices for which an election is made pursuant to section 43-1129.

16 10. The amount of depreciation or amortization of costs of child care
17 facilities deducted pursuant to section 167 or 188 of the internal revenue
18 code for which an election is made to amortize pursuant to section 43-1130.

19 11. Arizona state income tax refunds received, to the extent the amount
20 of the refunds is not already included in Arizona gross income, if a tax
21 benefit was derived by deduction of this amount in a prior year.

22 12. The amount paid as taxes on property in this state by a qualified
23 defense contractor with respect to which a credit is claimed under section
24 43-1166.

25 13. The loss of an insurance company that is exempt under section
26 43-1201 to the extent that it is included in computing Arizona gross income
27 on a consolidated return pursuant to section 43-947.

28 14. The amount by which the depreciation or amortization computed under
29 the internal revenue code with respect to property for which a credit was
30 taken under section 43-1169 exceeds the amount of depreciation or
31 amortization computed pursuant to the internal revenue code on the Arizona
32 adjusted basis of the property.

33 15. The amount by which the adjusted basis computed under the internal
34 revenue code with respect to property for which a credit was claimed under
35 section 43-1169 and which is sold or otherwise disposed of during the taxable
36 year exceeds the adjusted basis of the property computed under section
37 43-1169.

38 16. The amount by which the depreciation or amortization computed under
39 the internal revenue code with respect to property for which a credit was
40 taken under either section 43-1170 or 43-1170.01 exceeds the amount of
41 depreciation or amortization computed pursuant to the internal revenue code
42 on the Arizona adjusted basis of the property.

43 17. The amount by which the adjusted basis computed under the internal
44 revenue code with respect to property for which a credit was claimed under
45 either section 43-1170 or 43-1170.01 and which is sold or otherwise disposed

1 of during the taxable year exceeds the adjusted basis of the property
2 computed under section 43-1170 or 43-1170.01, as applicable.

3 18. The deduction referred to in section 1341(a)(4) of the internal
4 revenue code for restoration of a substantial amount held under a claim of
5 right.

6 19. The amount by which a capital loss carryover allowable pursuant to
7 section 1341(b)(5) of the internal revenue code exceeds the capital loss
8 carryover allowable pursuant to section 43-1130.01, subsection F.

9 20. Any amount deducted in computing Arizona taxable income as expenses
10 for installing solar stub outs or electric vehicle recharge outlets in this
11 state with respect to which a credit is claimed pursuant to section 43-1176.

12 21. Any wage expenses deducted pursuant to the internal revenue code
13 for which a credit is claimed under section 43-1175 and representing net
14 increases in qualified employment positions for employment of temporary
15 assistance for needy families recipients.

16 22. Any amount of expenses that were deducted pursuant to the internal
17 revenue code and for which a credit is claimed under section 43-1178.

18 23. Any amount deducted for conveying ownership or development rights
19 of property to an agricultural preservation district under section 48-5702
20 for which a credit is claimed under section 43-1180.

21 24. The amount of any deduction that is claimed in computing Arizona
22 gross income and that represents a donation of a school site for which a
23 credit is claimed under section 43-1181.

24 25. ANY AMOUNT DEDUCTED PURSUANT TO SECTION 170 OF THE INTERNAL REVENUE
25 CODE REPRESENTING CONTRIBUTIONS TO A SCHOOL TUITION ORGANIZATION FOR WHICH A
26 CREDIT IS CLAIMED UNDER SECTION 43-1182.

27 Sec. 3. Title 43, chapter 11, article 6, Arizona Revised Statutes, is
28 amended by adding section 43-1182, to read:

29 43-1182. Credit for contributions to school tuition
30 organization; definitions

31 A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2005, A
32 CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR THE AMOUNT OF
33 VOLUNTARY CASH CONTRIBUTIONS MADE BY THE TAXPAYER DURING THE TAXABLE YEAR TO
34 A SCHOOL TUITION ORGANIZATION.

35 B. THE AMOUNT OF THE CREDIT IS THE TOTAL AMOUNT OF THE TAXPAYER'S
36 CONTRIBUTIONS FOR THE TAXABLE YEAR UNDER SUBSECTION A OF THIS SECTION AND IS
37 PREAPPROVED BY THE DEPARTMENT PURSUANT TO SUBSECTION D OF THIS SECTION.

38 C. THE DEPARTMENT:

39 1. SHALL NOT ALLOW TAX CREDITS FOR CONTRIBUTIONS MADE IN ANY CALENDAR
40 YEAR THAT EXCEED FIVE MILLION DOLLARS.

41 2. SHALL PREAPPROVE TAX CREDITS SUBJECT TO SUBSECTION D OF THIS
42 SECTION.

43 3. SHALL ALLOW THE TAX CREDITS ON A FIRST COME, FIRST SERVED BASIS.

44 D. ONLY FOR THE PURPOSES OF SUBSECTION C, PARAGRAPH 2 OF THIS SECTION,
45 BEFORE MAKING A CONTRIBUTION TO A STUDENT TUITION ORGANIZATION, THE TAXPAYER

1 SHALL NOTIFY THE STUDENT TUITION ORGANIZATION OF THE TOTAL AMOUNT OF
2 CONTRIBUTIONS THAT THE TAXPAYER INTENDS TO MAKE TO THE STUDENT TUITION
3 ORGANIZATION. BEFORE ACCEPTING THE CONTRIBUTION, THE STUDENT TUITION
4 ORGANIZATION SHALL REQUEST PREAPPROVAL FROM THE DEPARTMENT FOR THE TAXPAYER'S
5 INTENDED CONTRIBUTION AMOUNT. THE DEPARTMENT SHALL PREAPPROVE OR DENY THE
6 REQUESTED AMOUNT WITHIN TWENTY DAYS AFTER RECEIVING THE REQUEST FROM THE
7 STUDENT TUITION ORGANIZATION. IF THE DEPARTMENT PREAPPROVES THE REQUEST, THE
8 STUDENT TUITION ORGANIZATION SHALL IMMEDIATELY NOTIFY THE TAXPAYER THAT THE
9 REQUESTED AMOUNT WAS PREAPPROVED BY THE DEPARTMENT. IN ORDER TO RECEIVE A
10 TAX CREDIT UNDER THIS SUBSECTION, THE TAXPAYER SHALL MAKE THE CONTRIBUTION TO
11 THE STUDENT TUITION ORGANIZATION WITHIN TEN DAYS AFTER RECEIVING NOTICE FROM
12 THE STUDENT TUITION ORGANIZATION THAT THE REQUESTED AMOUNT WAS
13 PREAPPROVED. IF THE STUDENT TUITION ORGANIZATION DOES NOT RECEIVE THE
14 PREAPPROVED CONTRIBUTION FROM THE TAXPAYER WITHIN THE REQUIRED TEN DAYS, THE
15 STUDENT TUITION ORGANIZATION SHALL IMMEDIATELY NOTIFY THE DEPARTMENT AND THE
16 DEPARTMENT SHALL NO LONGER INCLUDE THIS PREAPPROVED CONTRIBUTION AMOUNT WHEN
17 CALCULATING THE LIMIT PRESCRIBED IN SUBSECTION C, PARAGRAPH 2 OF THIS
18 SECTION.

19 E. A SCHOOL TUITION ORGANIZATION THAT RECEIVES CONTRIBUTIONS UNDER
20 THIS SECTION SHALL ALLOW THE DEPARTMENT TO VERIFY THAT THE EDUCATIONAL
21 SCHOLARSHIPS AND TUITION GRANTS THAT ARE ISSUED PURSUANT TO THIS SECTION ARE
22 AWARDED TO STUDENTS WHO ATTEND A QUALIFIED SCHOOL.

23 F. IF THE ALLOWABLE TAX CREDIT EXCEEDS THE TAXES OTHERWISE DUE UNDER
24 THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS
25 TITLE, THE TAXPAYER MAY CARRY THE AMOUNT OF THE CLAIM NOT USED TO OFFSET THE
26 TAXES UNDER THIS TITLE FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE
27 YEARS' INCOME TAX LIABILITY.

28 G. THE CREDIT ALLOWED BY THIS SECTION IS IN LIEU OF ANY DEDUCTION
29 PURSUANT TO SECTION 170 OF THE INTERNAL REVENUE CODE AND TAKEN FOR STATE TAX
30 PURPOSES.

31 H. THE TAX CREDIT IS NOT ALLOWED IF THE TAXPAYER DESIGNATES THE
32 TAXPAYER'S CONTRIBUTION TO THE SCHOOL TUITION ORGANIZATION FOR THE DIRECT
33 BENEFIT OF ANY SPECIFIC STUDENT.

34 I. A SCHOOL TUITION ORGANIZATION THAT RECEIVES CONTRIBUTIONS UNDER
35 THIS SECTION SHALL USE AT LEAST NINETY PER CENT OF THOSE CONTRIBUTIONS TO
36 PROVIDE EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS ONLY TO CHILDREN WHOSE
37 FAMILY INCOME DOES NOT EXCEED ONE HUNDRED EIGHTY-FIVE PER CENT OF THE INCOME
38 LIMIT REQUIRED TO QUALIFY A CHILD FOR REDUCED PRICE LUNCHES UNDER THE
39 NATIONAL SCHOOL LUNCH AND CHILD NUTRITION ACTS (42 UNITED STATES CODE
40 SECTIONS 1751 THROUGH 1785) AND WHO EITHER:

41 1. ATTENDED A GOVERNMENTAL PRIMARY OR SECONDARY SCHOOL AS A FULL-TIME
42 STUDENT AS DEFINED IN SECTION 15-901 FOR AT LEAST THE FIRST ONE HUNDRED DAYS
43 OF THE PRIOR FISCAL YEAR AND TRANSFERRED FROM A GOVERNMENTAL PRIMARY OR
44 SECONDARY SCHOOL TO A QUALIFIED SCHOOL.

1 2. ENROLL IN A QUALIFIED SCHOOL IN A KINDERGARTEN PROGRAM.

2 3. RECEIVED AN EDUCATIONAL SCHOLARSHIP OR TUITION GRANT UNDER
3 PARAGRAPH 1 OR 2 OF THIS SUBSECTION IF THE CHILDREN CONTINUE TO ATTEND A
4 QUALIFIED SCHOOL IN A SUBSEQUENT YEAR.

5 J. IN 2006, A SCHOOL TUITION ORGANIZATION SHALL NOT ISSUE AN
6 EDUCATIONAL SCHOLARSHIP OR A TUITION GRANT IN AN AMOUNT THAT EXCEEDS FOUR
7 THOUSAND TWO HUNDRED DOLLARS FOR STUDENTS IN A KINDERGARTEN PROGRAM OR GRADES
8 ONE THROUGH EIGHT OR FIVE THOUSAND FIVE HUNDRED DOLLARS FOR STUDENTS IN
9 GRADES NINE THROUGH TWELVE. IN EACH YEAR AFTER 2006, THE LIMITATION AMOUNT
10 FOR A SCHOLARSHIP OR A GRANT UNDER THIS SUBSECTION SHALL BE INCREASED BY ONE
11 HUNDRED DOLLARS.

12 K. A CHILD IS STILL ELIGIBLE TO RECEIVE AN EDUCATIONAL SCHOLARSHIP OR
13 TUITION GRANT UNDER SUBSECTION G OF THIS SECTION IF THE CHILD MEETS THE
14 CRITERIA TO RECEIVE A REDUCED PRICE LUNCH BUT DOES NOT ACTUALLY CLAIM THAT
15 BENEFIT.

16 L. THE SCHOOL TUITION ORGANIZATION SHALL REQUIRE THAT THE CHILDREN USE
17 THE EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS ON A FULL-TIME BASIS. IF A
18 CHILD LEAVES THE QUALIFIED SCHOOL BEFORE COMPLETING AN ENTIRE SCHOOL YEAR,
19 THE QUALIFIED SCHOOL SHALL REFUND A PRORATED AMOUNT OF THE EDUCATIONAL
20 SCHOLARSHIP OR TUITION GRANT TO THE STUDENT TUITION ORGANIZATION THAT ISSUED
21 THE EDUCATIONAL SCHOLARSHIP OR TUITION GRANT TO THE CHILD. ANY REFUNDS
22 RECEIVED BY THE SCHOOL TUITION ORGANIZATION UNDER THIS SUBSECTION SHALL BE
23 ALLOCATED FOR EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS TO QUALIFIED
24 CHILDREN IN THE FOLLOWING YEAR.

25 M. CHILDREN WHO RECEIVE EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS
26 UNDER THIS SECTION SHALL BE ALLOWED TO ATTEND ANY QUALIFIED SCHOOL OF THEIR
27 PARENTS' CHOICE.

28 N. A SCHOOL TUITION ORGANIZATION THAT RECEIVES A VOLUNTARY CASH
29 CONTRIBUTION PURSUANT TO SUBSECTION A OF THIS SECTION SHALL REPORT TO THE
30 DEPARTMENT, IN A FORM PRESCRIBED BY THE DEPARTMENT, BY JUNE 30 OF EACH YEAR
31 THE FOLLOWING INFORMATION:

32 1. THE NAME, ADDRESS AND CONTACT NAME OF THE SCHOOL TUITION
33 ORGANIZATION.

34 2. THE TOTAL NUMBER OF CONTRIBUTIONS RECEIVED DURING THE PREVIOUS
35 CALENDAR YEAR.

36 3. THE TOTAL DOLLAR AMOUNT OF CONTRIBUTIONS RECEIVED DURING THE
37 PREVIOUS CALENDAR YEAR.

38 4. THE TOTAL NUMBER OF CHILDREN AWARDED EDUCATIONAL SCHOLARSHIPS OR
39 TUITION GRANTS DURING THE PREVIOUS CALENDAR YEAR.

40 5. THE TOTAL DOLLAR AMOUNT OF EDUCATIONAL SCHOLARSHIPS AND TUITION
41 GRANTS AWARDED DURING THE PREVIOUS CALENDAR YEAR.

42 6. FOR EACH SCHOOL TO WHICH EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS
43 WERE AWARDED:

1 (a) THE NAME AND ADDRESS OF THE SCHOOL.

2 (b) THE NUMBER OF EDUCATIONAL SCHOLARSHIPS AND TUITION GRANTS AWARDED
3 DURING THE PREVIOUS CALENDAR YEAR.

4 (c) THE TOTAL DOLLAR AMOUNT OF EDUCATIONAL SCHOLARSHIPS AND TUITION
5 GRANTS AWARDED DURING THE PREVIOUS CALENDAR YEAR.

6 7. VERIFICATION THAT AN INDEPENDENT REVIEW OF FINANCIAL STATEMENTS
7 ACCORDING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES WAS COMPLETED BY A
8 CERTIFIED PUBLIC ACCOUNTANT FOR THE PREVIOUS CALENDAR YEAR.

9 0. THE DEPARTMENT SHALL ADOPT RULES NECESSARY FOR THE ADMINISTRATION
10 OF THIS SECTION.

11 P. FOR THE PURPOSES OF THIS SECTION:

12 1. "QUALIFIED SCHOOL" MEANS A NONGOVERNMENTAL PRIMARY SCHOOL OR
13 SECONDARY SCHOOL:

14 (a) THAT IS LOCATED IN THIS STATE, THAT DOES NOT DISCRIMINATE ON THE
15 BASIS OF RACE, COLOR, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN AND THAT
16 SATISFIES THE REQUIREMENTS PRESCRIBED BY LAW FOR PRIVATE SCHOOLS IN THIS
17 STATE ON JANUARY 1, 2005.

18 (b) THAT ANNUALLY ADMINISTERS AND MAKES AVAILABLE TO THE PUBLIC THE
19 AGGREGATE TEST SCORES OF ITS STUDENTS ON A NATIONALLY STANDARDIZED
20 NORM-REFERENCED ACHIEVEMENT TEST, PREFERABLY THE ARIZONA INSTRUMENT TO
21 MEASURE STANDARDS TEST ADMINISTERED PURSUANT TO SECTION 15-741.

22 (c) THAT REQUIRES ALL TEACHING STAFF AND ANY PERSONNEL THAT HAVE
23 UNSUPERVISED CONTACT WITH STUDENTS TO BE FINGERPRINTED.

24 2. "SCHOOL TUITION ORGANIZATION" MEANS A CHARITABLE ORGANIZATION IN
25 THIS STATE THAT BOTH:

26 (a) IS EXEMPT FROM FEDERAL TAXATION UNDER SECTION 501(c)(3) OF THE
27 INTERNAL REVENUE CODE AND THAT ALLOCATES NINETY PER CENT OF ITS ANNUAL
28 REVENUE FOR EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS TO CHILDREN TO ALLOW
29 THEM TO ATTEND ANY QUALIFIED SCHOOL OF THEIR PARENTS' CHOICE.

30 (b) PROVIDES EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS TO STUDENTS
31 WITHOUT LIMITING AVAILABILITY TO ONLY STUDENTS OF ONE SCHOOL.

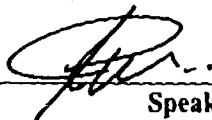
32 Sec. 4. Purpose

33 Pursuant to section 43-223, Arizona Revised Statutes, the legislature
34 enacts section 43-1182, Arizona Revised Statutes, as added by this act, to
35 encourage businesses to direct a portion of their taxes by contributing to
36 student tuition organizations in order to improve education by raising
37 tuition scholarships for children in this state.

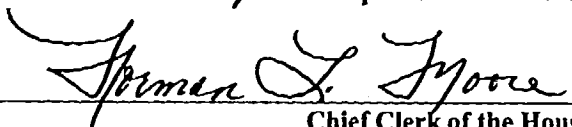
Passed the House May 6, 20 05,

by the following vote: 37 Ayes,

20 Nays, 3 Not Voting



Speaker of the House

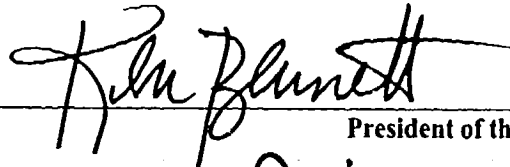


Chief Clerk of the House

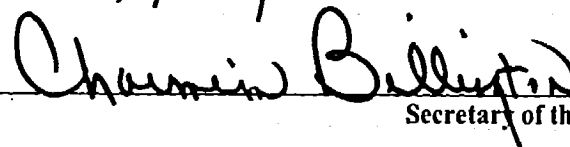
Passed the Senate May 6, 20 05,

by the following vote: 19 Ayes,

10 Nays, 1 Not Voting



President of the Senate




Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

13th day of May, 20 05

at 8:38 o'clock a. M.



Secretary to the Governor

Approved this _____ day of

_____, 20 _____,

at _____ o'clock _____ M.

VETO

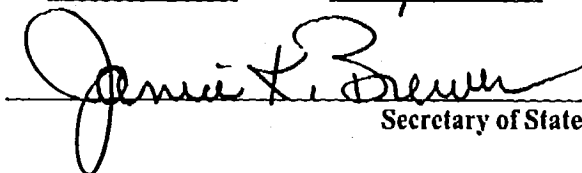
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

on 26th day of May, 20 05,

at 3:03 o'clock p. M.



Secretary of State

S.B. 1527